

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joy Almeyda	Team: Squad #1	CCRB Case #: 201301992	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury		
Incident Date(s) Saturday, 03/09/2013 11:20 PM	Location of Incident: § 87(2)(b)		Precinct: 67	18 Mo. SOL 9/9/2014	EO SOL 9/9/2014
Date/Time CV Reported Wed, 03/20/2013 6:17 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 03/20/2013 6:18 PM		

Complainant/Victim	Type	Home Address

[illegible]

Witness(es)		Home Address	

Subject Officer(s)	Shield	TaxID	Command
1. POM Jovaniel Cordova	15786	946459	PBBS SU
2. SGT Mourad Mourad	01539	936055	PBBS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Harry Santiago	3465	918285	PBBS SU
2. DT3 John Hoder	30200	935026	PBBS SU
3. LCD Jose Ortiz	00000	920682	PBBS SU
4. POM Piero Lasaponara	07631	947157	PBBS SU
5. POM Adam Conlin	07146	946871	PBBS SU

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mourad Mourad	Abuse: Sergeant Mourad Mourad stopped § 87(2)(b)	
B.POM Jovaniel Cordova	Abuse: Police Officer Jovaniel Cordova stopped § 87(2)(b)	
C.SGT Mourad Mourad	Force: Sergeant Mourad Mourad fired his gun at § 87(2)(b)	
D.POM Jovaniel Cordova	Force: Police Officer Jovaniel Cordova fired his gun at § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint via email with the CCRB on March 20, 2013. She reported an incident on behalf of herself and § 87(2)(b)-old § 87(2)(b) that occurred on March 9, 2013.

On March 9, 2013 at approximately 11:20 pm, and in the vicinity of § 87(2)(b) in Brooklyn, Sgt. Mourad Mourad and PO Jovaniel Cordova, assigned to Brooklyn South Specialized Units, stopped their unmarked vehicle, approached § 87(2)(b) and told him to stop and not move (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). Sgt. Mourad and PO Cordova subsequently drew, pointed, and fired their service weapons at § 87(2)(b) striking him several times (**Allegations C and D: Force**, § 87(2)(g)). § 87(2)(b) expired from his injuries.

§ 87(2)(b) took cell phone video footage of the aftermath of the shooting. The video did not capture the shooting or anything leading up to the shooting (Board Review 1). § 87(2)(g)

§ 87(2)(g) As of July 30, 2014, the Brooklyn DA's Office declined to prosecute the involved officers. The case was not presented to a Grand Jury. The case was subsequently taken off hold. In March 2016, the Brooklyn DA's office released its file to the CCRB. § 87(2)(g)

§ 87(2)(g) The civil case was settled on § 87(2)(b).

Findings and Recommendations

Allegation A: Abuse of Authority - Sergeant Mourad Mourad stopped § 87(2)(b)

Allegation B: Abuse of Authority – Police Officer Jovaiel Cordova stopped § 87(2)(b)

It is undisputed that on March 9, 2013 at approximately 11:20 pm, and in the vicinity of § 87(2)(b), Sgt. Mourad (driver) and PO Cordova (rear passenger), stopped their unmarked vehicle in front of where § 87(2)(b) and several other males were congregating outside a home, exited the vehicle and approached the group. The location is a residential block and § 87(2)(b) are next door to one another. The homes are separated by a gated driveway and both homes have fences with gates in front of them (Board Review 2).

§ 87(2)(b) (Board Review 3, 4, 5, 6, 7), a witness who observed the incident from her § 87(2)(b)

§ 87(2)(b) Board Review 10 and 31), stated that Sgt. Mourad and PO Cordova simultaneously jumped out of the vehicle and Sgt. Mourad yelled something to the effect of, “Stop; Don’t move!” Sgt. Mourad then singled out and approached § 87(2)(b). While § 87(2)(b) was familiar with § 87(2)(b) she did not learn that he was involved in the incident until it was over. § 87(2)(b) put both of his hands up in the air. § 87(2)(b) did not notice where § 87(2)(b)'s hands had been prior, did not see anything in his hands, and did not see him drop his hands. However, she also acknowledged that she could not really see what the group was doing from her

vantage point. § 87(2)(b) stated that her son, § 87(2)(b), observed the incident from a different room inside her apartment, so she was unsure how much of the incident he saw. § 87(2)(b) informed § 87(2)(b) shortly after the shooting that he believed § 87(2)(b) was the victim.

§ 87(2)(b) (Board Review 8, 9, 23), stated that the group of males was walking down the street, rather than congregating, when the officers exited their car and loudly told the group to stop and put their hands up. Everyone stopped except for § 87(2)(b) who began to walk backwards. § 87(2)(b) did not see § 87(2)(b) make any other moves though he was focused on the officer who subsequently rushed toward him, drew his gun, and fired.

§ 87(2)(b) (Board Review 20), an uninvolved witness, had just exited his car on the block when he saw the officers' car pass him. The car stopped and the driver yelled, "freeze" to a group of approximately 15 "kids" standing in front of a house. The officer then said, "so whatchu got in your hand? Whatchu got in your hand?"

§ 87(2)(b) (Board Review 21) § 87(2)(b) stated that the group was in front § 87(2)(b) § 87(2)(b), when officers drove up. Both officers were seated in the front of their car and opened their windows. Sgt. Mourad asked § 87(2)(b) where his brother was and when § 87(2)(b) did not answer, told him that he was not going to amount to anything. § 87(2)(b) responded by turning his back to the officers and walked toward the twins' house. The officers then jumped out of their vehicle with their guns drawn and approached him from each side on the sidewalk, blocking him in the driveway area. § 87(2)(b) tried to open the gate, found that it was locked, pulled up his sagging pants with both hands, and put both hands on top of the gate as though preparing to jump over the gate. The officers then yelled at him multiple times to, "Stop! Get the fuck down!" whilst having their guns drawn. § 87(2)(b) complied. He put his hands straight up and got down on his knees. His back was facing the officers and he was positioned very close to the gate. § 87(2)(b), § 87(2)(f) § 87(2)(b) he stated that § 87(2)(b) did not have a history of carrying a gun. § 87(2)(b) was not aware of and did not see any male in the group, including § 87(2)(b) in possession of a gun that evening or at the time of the incident.

Sgt. Mourad (Board Review 11, 12, 24) stated that he was driving back to the precinct when he drove past the group of males, none of whom he recognized at the time, and his lights hit on a metal bar of what he believed to be a gun. The gun handle was facing him and the gun was positioned in, who he later identified as, § 87(2)(b)'s waistband. He then observed § 87(2)(b) reach in and remove the gun while smiling at the other males in the group, confirming his belief that it was a firearm. Sgt. Mourad described the gun as a black revolver with a § 87(2)(b) handle. § 87(2)(b) then saw Sgt. Mourad and Sgt. Mourad informed PO Cordova that he saw a kid with a gun,

provided his description and instructed PO Cordova to exit the vehicle. PO Cordova exited the vehicle and Sgt. Mourad pulled the car forward three to five feet and past § 87(2)(b) and then exited, with § 87(2)(b) and the officers forming a triangle. Sgt. Mourad yelled, “Police! Get down on the ground. Drop the gun!” The entire group, except for § 87(2)(b) fled northbound and § 87(2)(b) kept the gun out the entire time.

PO Cordova (Board Review 13, 14, 25) observed a group of black males gathered on the street as they were driving. Sgt. Mourad yelled, “gun, gun, gun!” PO Cordova then jumped out of the vehicle with his shield out and flanked left while Sgt. Mourad went to the right of the group. The group scattered except for § 87(2)(b). As PO Cordova ran up to where the group had been, he observed § 87(2)(b) pointing a gun, which he described as a silver revolver at Sgt. Mourad. PO Cordova pointed his gun at § 87(2)(b) and yelled three times, “Police, drop the gun!”

An officer may stop an individual when there is reasonable suspicion to believe that an individual has committed, is committing, or is about to commit a crime, People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 15). Officers are entitled to rely and act based on information provided by a fellow officer. People v. Ketcham, 93 N.Y.2d 416, 419-420 (1999) (Board Review 16).

§ 87(2)(g)

Allegation C: Force - Sergeant Mourad Mourad fired his gun at § 87(2)(b)

Allegation D: Force - Police Officer Jovaniel Cordova fired his gun at § 87(2)(b)

§ 87(2)(b) stated that when Sgt. Mourad yelled stop, § 87(2)(b) put both of his hands up in the air. Sgt. Mourad said something to § 87(2)(b) but she could not hear what he said or whether § 87(2)(b) responded. As previously noted, § 87(2)(b) did not see § 87(2)(b) drop his hands once they were up. § 87(2)(b) had been in front of the gate, but began moving back toward the driveway two driveways down from § 87(2)(b)'s building § 87(2)(b) § 87(2)(b). At this point, § 87(2)(b) believed that a stop and frisk was occurring so she opened her window and looked down at her phone for a couple of seconds to set her phone to video record. She then observed Sgt. Mourad draw, point, and shoot § 87(2)(b) one time from approximately three to four feet away [Board Review 17). § 87(2)(b) had been standing by the gate and facing Sgt. Mourad when he was shot. § 87(2)(b) fell backward onto the ground in the driveway and then onto his right side. Sgt. Mourad approached § 87(2)(b) as he was on the ground, stood over him near his

feet and fired approximately seven additional rounds into him. During the second round of shots, Sgt. Mourad's back was facing § 87(2)(b) and his body obstructed her view of § 87(2)(b)'s upper body. § 87(2)(b) could not see whether § 87(2)(b) was moving and did not hear Sgt. Mourad say anything between the two rounds of gunfire. § 87(2)(b) was only paying attention to Sgt. Mourad, who was closer to her, and did not see PO Cordova draw his gun or know what he was doing during the interaction. § 87(2)(b) did not see § 87(2)(b) or the officers throw anything and did not see either officer pick anything up off the ground after the shooting. Sometime later, § 87(2)(b) saw an unidentified officer with a gun in his hand who stated that "he had a gun," but she did not see when or from where he obtained the gun. At no point did she see § 87(2)(b) holding a gun.

§ 87(2)(b) stated that § 87(2)(b) complied with officer requests to get down and lowered himself to his knees while his hands remained up in the air. An officer continued to yell at him and he replied, "I'm down. I'm down." § 87(2)(b) remained on his knees with his hands reaching to the sky and did not drop his hands at all once he was on his knees. His back was facing the officers and he was positioned very close to the gate. As mentioned above in Allegations A and B, § 87(2)(b) did not have knowledge of nor did he observe § 87(2)(b) in possession of a gun. Both officers subsequently shot § 87(2)(b) several times.

Sgt. Mourad stated that § 87(2)(b) took a few steps backward and "leaned" the gun toward the ground. Based on his experience, he believed that § 87(2)(b) was going to drop the gun and run. As he expected that he would have to chase and tackle § 87(2)(b), Sgt. Mourad only had his hand on his gun at this point. He continually instructed § 87(2)(b) to get on the ground and drop the gun. § 87(2)(b) did not comply but then raised the gun and pointed it in PO Cordova's direction. As a result, Sgt. Mourad drew and pointed his gun at § 87(2)(b). Sgt. Mourad estimated that he was approximately 12-15 feet away from § 87(2)(b) and had no possibility of cover since his vehicle was at his back. Sgt. Mourad did not know if PO Cordova had his gun drawn but he could hear him giving similar commands, identifying himself as the police and instructing § 87(2)(b) to drop the gun and get on the ground.

§ 87(2)(b) turned and pointed his gun at Sgt. Mourad, at bulletproof vest height, then back at PO Cordova and back again at Sgt. Mourad. Throughout, Sgt. Mourad continued to instruct § 87(2)(b) to drop the gun and get on the ground. The last time that § 87(2)(b) pointed his gun at Sgt. Mourad, he looked him in the eyes and raised the gun to head level. Up until this point, Sgt. Mourad believed that his vest could take a bullet, but with the gun pointed at his head, he felt that his life was in jeopardy. Sgt. Mourad responded by discharging several rounds at § 87(2)(b) and stated that he was the first one to discharge his firearm. He heard shots being fired but did not know whether any were coming from PO Cordova or § 87(2)(b). He did not see § 87(2)(b) discharge his firearm. Due to the firearm being pointed at both him and PO Cordova, Sgt. Mourad did not believe that he had the opportunity to have used any less than lethal methods of force against § 87(2)(b).

§ 87(2)(b) subsequently dropped to the ground and threw the firearm behind him and over the gate. No additional rounds were fired at § 87(2)(b) after he threw the firearm. Sgt. Mourad instructed PO Cordova to retrieve the firearm since the group of males (wearing distinctive red clothing) had started returning to the scene. PO Cordova hopped the fence and retrieved the firearm.

PO Cordova stated that as he was running toward § 87(2)(b) he assumed that § 87(2)(b) did not see him coming as § 87(2)(b) was running in his direction (northbound) with the gun still in his hand. After he yelled at § 87(2)(b) to drop the gun, § 87(2)(b) looked at him, turned, and pointed the gun at PO Cordova. § 87(2)(b) then went back and forth a few times, pointing the gun at Sgt. Mourad and then at PO Cordova while backing up into the driveway. This back and forth movement lasted approximately four to five seconds and the officers were approximately eight to nine feet away from § 87(2)(b). As § 87(2)(b) pointed the gun at Sgt. Mourad again, both Sgt. Mourad and PO Cordova discharged their weapons at the same time at § 87(2)(b). § 87(2)(b) made no verbal statements prior to the shooting and PO Cordova stated that he fired at § 87(2)(b) with the intention of protecting Sgt. Mourad. PO Cordova stopped firing when § 87(2)(b) ceased to be a threat. § 87(2)(b) fell into the fetal position and the firearm landed to § 87(2)(b)'s left side/midsection area, a few inches past the gate. PO Cordova ran toward § 87(2)(b) and recovered the firearm as a safety precaution because the males that had previously scattered had started returning to the area.

According to the autopsy report, § 87(2)(b) sustained seven gunshot wounds (some traveling back to front and some from front to back), one graze injury, and four shrapnel injuries. The autopsy did not determine the chronology of the wounds. No fouling or stippling of the skin was seen on any of the gunshot wounds and no gunshot powder residue was visible on any of § 87(2)(b)'s clothing or in the wound tracks. The report made no mention of shoring, an exit wound pattern that occurs when the skin is in contact with another object (such as the ground) when the bullet exits (Board Review 35). Dr. Melissa Pasquale, of the ME's office (though not the doctor who conducted the autopsy), was consulted to review the autopsy findings (Board Review 22). She could not determine § 87(2)(b)'s position when shot, or confirm or refute § 87(2)(b)'s assertion that Sgt. Mourad stood over § 87(2)(b) while he was on the ground for the final shots. She stated that there was no evidence (fouling, stippling) of close range fire of less than two feet distance or evidence by way of a wound pattern (shoring) typically associated with a bullet striking someone whilst that body part was against the ground. § 87(2)(b)'s multiple shrapnel wounds could be consistent with bullets striking the ground near him as well as striking the metal gate/fence behind him.

A .38 caliber RG Industries revolver and four .38 caliber cartridges were vouchered as part of the investigation (Board Review 41).

The Medical Examiner's Office conducted DNA tests on 3 swabs from the firearm allegedly possessed by § 87(2)(b). Swab 1.1 was taken from the sides of the trigger and the trigger guard. DNA testing on swab 1.1 found a mixture of at least two people's DNA, but § 87(2)(b) was excluded as a contributor [Defined in the report's appendix as: For the locations where the comparisons could be made, one or more of the DNA alleles seen in an individual's DNA profile were not seen in the mixture and this absence cannot be explained. Therefore, this person can be ruled out as a contributor.] Swab 1.2 was taken from the textured area of hand grips, and swab 1.3 was taken from the textured area of the hammer and cylinder release. The DNA samples from swabs 1.2 and 1.3 were not suitable for comparison [Defined in the report's appendix as: The DNA results on the evidence are either too incomplete or too complex to be the basis for

conclusions regarding the source of the DNA.] (Board Review 27). One latent print was developed from the revolver but it belonged to an NYPD Crime Scene officer (Board Review 26). According to Patrol Guide Procedure 203-11, only that amount of force necessary to overcome resistance will be used to effect an arrest. Deadly physical force will be used ONLY as a last resort and consistent with Department policy and the law (Board Review 28).

The court stated in People v. Finlayson, that officers cannot be required to unreasonably expose themselves to serious injury or death and therefore may take protective measures, such as drawing and pointing their firearms, when reasonable to do so under the circumstances. People v. Finlayson, 76 A.D.2d 670 (1980) (Board Review 29). People v. Livigni found that officers were justified in pointing their guns at the occupants of a car upon observing an empty holster on the front seat. People v. Livigni, 88 A.D.2d 386 (1982) (Board Review 30).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 33).
- § 87(2)(g) [REDACTED]
 - [REDACTED]

■ § 87(2)(g) [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]

- PO Cordova has been a member of service for 11 years, five years at the time of the incident. At the time of the incident, he had been a subject of 11 allegations in three cases. Currently he has been the subject of 24 allegations in nine cases. He has one other incident in which he was alleged to have drawn his gun, 201301007, and was exonerated. He was alleged to have pointed his gun at § 87(2)(b) [REDACTED] for this incident (spin-off § 87(2)(b) [REDACTED]) but she was uncooperative at that time and her allegation was truncated. PO Cordova has two substantiated allegations for entries, in 201301007 and 201606975. In the first, the Board recommended instructions, but the NYPD declined to prosecute. In the second, the Board recommended Command Discipline – B, and the department imposed command level instructions.
- Sgt. Mourad has been a member of service for 14 years, eight years at the time of the incident. He was the subject of six complaints, involving 24 allegations at that time and has not been the subject of any complaints since this incident. Sgt. Mourad was exonerated of a gun drawn allegation in 200609996 and has never been the subject of a substantiated allegation. Sgt. Mourad was involved in one prior firearms discharge in 2011. The Firearms Discharge Review Board determined that there were no violations of departmental guidelines and no corrective action was taken (Board Reviews 37, 40).

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- The family of § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York, claiming unreasonable force; assault and battery; wrongful death; pain and suffering; pre-death conscious pain and suffering; intentional infliction of emotional distress; negligent infliction of emotional distress; loss of enjoyment of life; medical and funeral expenses; negligent training; negligent supervision; negligent planning, including failure to adequately discipline, negligent retention and hiring; deprivation of constitutional, civil and common law rights; negligent hiring and retention of incompetent and unfit police employees; negligent supervision, training and instruction of employees; and respondent superior liability, and seeking \$20,000,000 as redress. On § 87(2)(b) [REDACTED], prior to going to trial, the parties agreed to a settlement without admitting any fault of liability. The action was dismissed against the defendants, and the City agreed to pay the plaintiffs \$250,000.

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

Allegations Not Pleaded

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date